

Application No. 10/763,928  
Amendment dated March 19, 2007  
Reply to the Office action of November 17, 2006

**Amendments to the Drawings:**

The attached sheet of drawings includes changes to FIG. 40. This sheet, which includes FIG. 40, replaces the original sheet including FIG. 40. In FIG. 40, previously omitted reference character 267 has been added.

Attachment: Replacement Sheet  
Annotated Sheet Showing Changes

### **REMARKS**

Claims 1-7 and 9-17 are pending; claim 8 is canceled.

The Examiner's indication that claims 5 and 6 are allowed and that claims 13 and 14 would be allowable if amended to address the rejection under 35 U.S.C. 112 is noted with appreciation.

The objection to the drawings is addressed by amending FIG. 40 to include reference character 267.

Claim 1 was rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,644,173 to Lazaris et al. Lazaris does not disclose first and second piercing elements formed as a single removable unit stationary in use during forming the inlet and the outlet, as presently recited in claim 1. Instead, Lazaris discloses that its platen 40 carrying the probes 42 and 44 is shifted between a retracted and an advanced position by a pneumatic cylinder 46 to pierce the cartridge.

Claims 2-4, 7-12 and 15-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lazaris in view of U.S. Patent No. 5,794,519 to Fischer. It is respectfully submitted that claims 2-4, 7-12 and 15-17 are patentable over Lazaris in view of Fischer.

With respect to claim 2, Lazaris does not disclose a fixed lower part and an upper part rotatable relative to the lower part, with a removable unit is mounted, in use, in the fixed lower part. The Office action attempts to find this missing element by looking to Fischer. However, Fischer does not disclose a first piercing element for forming an inlet mounted on a fixed lower part. Instead, Fischer discloses a needle 9 for forming an inlet mounted on an upwardly pivotable upper part 1. Fischer also does not disclose a single unit having a first piercing element for forming an inlet and a second piercing element for forming an outlet, and also does not disclose such a single unit that is removable. Instead, Fischer discloses separate needles 9 and inwardly-pointing tips of a pyramid plate disposed on opposing surfaces. Given the lack of disclosure in either Lazaris or Fischer, their proposed combination will not result in the machine recited in claim 2.

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Moreover, as set forth in the prior Amendment, the Office action fails to identify any motivation in either reference for their proposed combination, and such motivation is not present because the disclosures of both Fischer and Lazaris teach away from such a combination. Fischer discloses a capsule that is pierced from opposite sides. In contrast, Lazaris describes cartridges that are pierced in opposite directions as having certain problems and disadvantages. (Col. 1, ll. 29-55.)

Claims 10-12 and 15-17 depend from claim 1, and are respectfully submitted to be patentable for the foregoing reasons.

New claim 18 recites that the the upper part and the cartridge mount are rotatable about a common hinge axis. As shown in Fischers, the expeller arm 24 is rotatable about a different axis than the upper part 1.

For the reasons set forth above, claims 1-7 and 9-18 are believed to be allowable, and reconsideration and allowance of claims 1-7 and 9-18 are respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

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FIG. 40.

